



BEFORE THE ARIZONA POW

0000095099

AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE ) DOCKET NO.  
APPLICATION OF SOUTHWEST )  
TRANSMISSION COOPERATIVE, ) L-00000CC-09-0158-00142  
INC., OR ITS ASSIGNEES, FOR )  
A CERTIFICATE OF ) Case No. 142  
ENVIRONMENTAL COMPATIBILITY )  
FOR THE SAN MANUEL )  
INTERCONNECT PROJECT LOCATED )  
IN THE VICINITY OF SAN ) SECOND PREFILING  
MANUEL IN PINAL COUNTY, )  
ARIZONA. ) MEETING

AZ CORP COMMISSION  
DOCKET CONTROL

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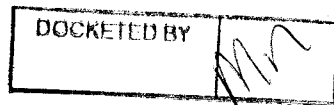
At: Phoenix, Arizona  
Date: March 13, 2009  
Filed: March 30, 2009

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Arizona Corporation Commission

DOCKETED

MAR 30 2009



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By: MICHELE E. BALMER  
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1           BE IT REMEMBERED that the above-entitled matter  
2 came on regularly to be heard before the Arizona Power  
3 Plant and Transmission Line Siting Committee, 1275 West  
4 Washington Street, Phoenix, Arizona, commencing at.  
5 10:00 a.m. on the 13th day of March, 2009.

6

7 BEFORE: JOHN FOREMAN, Committee Chairman

8

9 APPEARANCES:

10 For the Arizona Corporation Commission Staff:

11           Ms. Robin Mitchell  
12           Staff Attorney, Legal Division  
13           1200 West Washington Street  
14           Phoenix, Arizona 85007

15 For Southwest Transmission Cooperative, Inc.:

16           GALLAGHER & KENNEDY, P.A.  
17           By: Mr. Michael M. Grant  
18           2575 East Camelback Road, Suite 1100  
19           Phoenix, Arizona 85016

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21   MICHELE E. BALMER  
22   Certified Reporter  
23   Certificate No. 50489

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1 CHMN. FOREMAN: Let's go on the record. All  
2 right. We are back on the record with what will  
3 eventually, hopefully, become Docket No. 142, and this is  
4 the San Manuel interconnect project. And I hope you will  
5 not think me flip by referring to it in only three or four  
6 words instead of 15 or 20.

7 MR. GRANT: Not at all, Judge.

8 CHMN. FOREMAN: Now, we've had an issue come up  
9 concerning a potential tour, so why don't we fill in the  
10 record and let me know what the situation is.

11 MR. GRANT: Well, Judge, I'll start, but I want  
12 to quickly defer to Robin. On Monday afternoon, I got a  
13 call from Janice Alward at the Commission's Legal Division  
14 expressing some concern about open meeting issues  
15 associated with, as I understand it, polling the committee  
16 on whether to have a tour or not, and asking if I would  
17 call.

18 So since it's the Commission's Legal Division's  
19 issue, why don't I defer the balance to Robin, and  
20 hopefully I have sort of put it in the right context.

21 MS. MITCHELL: Mr. Grant, thank you. Thank you  
22 so much for deferring to me.

23 I want to start by saying I am not an open  
24 meeting law expert, but I think that the concern --

25 CHMN. FOREMAN: Well, apparently I'm not either.

1 MS. MITCHELL: It's a nuanced area of the law, I  
2 think, that takes a lot of thought about.

3 But I think the concern was -- and I wasn't  
4 really sure whether it was just to decide when the tour  
5 was or whether to have a tour at all. And I think the  
6 concern that we would have about polling the committee  
7 members on whether a tour would be necessary, it could be  
8 viewed by some on the outside as a way of taking -- of  
9 deciding how to take evidence in a matter that would be  
10 subject to the open meeting law, which it's my  
11 understanding could be a potential violation.

12 And I think just out of an overabundance of  
13 caution -- and while I did not personally live through  
14 TS-5 to TS-9, there is some concern that there will be  
15 some litigation that ensues from that. And I think just  
16 out of an overabundance of caution, we just want to raise  
17 this as an issue and avoid any potential problems.

18 CHMN. FOREMAN: Well, there is no one here who  
19 has a more sincere desire to avoid problems than me. And  
20 I'm not sure exactly how the litigation concerning TS-5 to  
21 TS-9 is going to impact this case. I'm hoping it won't.

22 But if there's -- my reading of the procedural  
23 rules of the Commission is that the person who decides  
24 whether there will be a tour and what will happen on the  
25 tour is the chairman. So it's not a decision that would

1 be made by the committee. It's, therefore, not legal  
2 action within the definition of the statute, the open  
3 meeting statute. And so I was operating under the naive,  
4 apparently, belief that if it wasn't covered by the  
5 statute, it wouldn't be a problem.

6 I have no desire to re-live any of what I have  
7 had to go through in the last few months. And so, to me,  
8 the easiest way to deal with this, frankly, is just say,  
9 don't schedule a tour. We'll go to the hearing. The  
10 Applicant can put on the Google --

11 MR. GRANT: We'll have the Google flyover.

12 CHMN. FOREMAN: And if any member of the  
13 committee decides that they would like to have a tour,  
14 then we can address the when and the where and the how at  
15 that time. Is that a resolution that makes sense to  
16 everybody?

17 MR. GRANT: Judge, I think that's a very safe  
18 course of action. I didn't mean to leave the field. I  
19 think it's a very expansive view of the open meeting law.  
20 Like Robin, I'm not an authority on it, although it had  
21 just been passed when I joined the Attorney General's  
22 Office back in '76.

23 But I have always thought that you don't get a  
24 lot of help from the statute. But, you know, it's legal  
25 action. It's a collective decision pursuant to the laws

1 of the state. I always thought that went to your final  
2 decision, not your procedural decisions, not when do you  
3 move toward that, how do you move toward that, those kinds  
4 of things. And I did quickly review the case law. It  
5 seemed to support that position.

6           Notwithstanding that, I think what you have  
7 outlined is a very safe course of action. And in the  
8 context of this, given the four-wheel drive aspects, the  
9 driving distance and that kind of thing, plus the pretty  
10 contained aspect of the project, I think an initial  
11 decision to not have a tour is a good one from the posture  
12 of the case as well.

13           CHMN. FOREMAN: And let's expand on that a little  
14 bit. When we spoke last time, I don't think you knew for  
15 sure whether -- as I understand it, the tour would consist  
16 primarily of viewing the proposed line site from a  
17 location near a paved road near the beginning of the line  
18 in San Manuel, and then taking a -- was it a 30-mile  
19 semicircular --

20           MR. GRANT: About a 45-minute drive.

21           CHMN. FOREMAN: -- path over a road of  
22 indeterminant quality to view another place where the line  
23 would go, and that there wasn't any line that actually --  
24 or there wasn't any road or vantage point that would  
25 actually allow any of the committee members to travel

1 along the line for any significant distance. Is that  
2 understanding correct?

3 MR. GRANT: That is correct.

4 CHMN. FOREMAN: You have learned now that the  
5 road that we would have to traverse in order to get to the  
6 back side of the line is a road that is not as good  
7 perhaps as we had hoped?

8 MR. GRANT: Right. It would be the  
9 recommendation to travel in four-wheel drive vehicles. If  
10 you go the Mammoth route, some portions of that road are  
11 not well-maintained by the county, and in any kind of  
12 recent bad weather conditions could be impassable to a  
13 passenger car.

14 If you go the southern route, that one you  
15 definitely need -- through San Manuel and over to the  
16 east, that one you definitely need a four-wheel drive  
17 vehicle because there is no bridge over the river. So  
18 either way, using a passenger car would be iffy at best.  
19 And it would be -- I also wasn't sure about the time. It  
20 would be at least a 45-minute one-way trip.

21 CHMN. FOREMAN: An hour and a half total.

22 MR. GRANT: Just to get over there to look two  
23 ways and come back would be an hour-and-a-half round trip.

24 CHMN. FOREMAN: Plus whatever time you spend  
25 observing.



1 MR. GRANT: Right.

2 CHMN. FOREMAN: All right. Well, it seems to me  
3 that the potential benefit from such a tour, even assuming  
4 there is no open meeting potential problem, does not  
5 significantly -- the potential problems, it seem to me,  
6 significantly outweigh the potential benefit. And so I  
7 think the simplest, easiest thing to do is, as I said,  
8 just let's go have the hearing, take a look at the Google  
9 tour. If anybody wants to go beyond that, then we'll  
10 cross that bridge when we come to it.

11 MR. GRANT: Judge, one other thing that you had  
12 asked me about. Well, or one thing that I did afterwards  
13 was once we narrowed to this 7th to 19th window, we  
14 checked with the Hilton. And inside that window, the  
15 Hilton is available the 11th, the 12th and the 13th. And  
16 the country club is available on the 11th, but, again, the  
17 country club we had the problem of not being able to  
18 schedule back-to-back days.

19 CHMN. FOREMAN: Let's tentatively pick the 12th  
20 and the 13th.

21 Tara, have we heard back from all of the  
22 committee members with their schedules?

23 MS. WILLIAMS: We have not heard back from all of  
24 them. Most of them are available on the 12th and the  
25 13th, though.

1 MR. GRANT: Okay.

2 CHMN. FOREMAN: So let's tentatively seize on the  
3 12th and 13th, and we'll make another attempt to find out  
4 from those that haven't called in what their schedules  
5 are.

6 MR. GRANT: Okay. Good.

7 CHMN. FOREMAN: I'm assuming that it's still okay  
8 to call the committee members and ask them what their  
9 schedules are?

10 MS. MITCHELL: Mr. Chairman, I think if that is  
11 just the nature of the inquiry, it sounds okay to me.

12 CHMN. FOREMAN: I have avoided even sending  
13 holiday greetings to members, and I'm being very serious  
14 now. I'm not being flip. I have avoided communicating  
15 with the members of my committee, except for individuals  
16 on individual things that have nothing to do with specific  
17 future -- possible future applications, because I've been  
18 trying to work out exactly what I can do that will not  
19 create a problem.

20 MS. MITCHELL: You know, Mr. Chairman, I was  
21 telling Mr. Grant on the way up here, I don't know if I  
22 would even speak to anybody. It's very confining. I came  
23 out of corporate practice, and I find that this makes it  
24 difficult to even get the work done. But if that's the  
25 statute and the parameters, I guess we just work within

1 them.

2 CHMN. FOREMAN: Let me make this request. If  
3 there are folks in your Staff who are concerned about  
4 tours, I'm, frankly, concerned about the possibility of  
5 being able to do a tour that would not run the risk of  
6 incurring an objection and the aftermath that has befallen  
7 me from that.

8 So could I ask that your office put together some  
9 sort of protocol for doing tours, what would need to be  
10 done from the notice stage, all the way through the  
11 completion stage, so that -- and that could be  
12 communicated to me so that in this case or in other cases,  
13 if members of the committee wanted to have a tour, what it  
14 is we could do that would be okay?

15 MS. MITCHELL: Mr. Chairman, I will certainly  
16 pass that along to the people up higher than me and know  
17 more than me.

18 CHMN. FOREMAN: Very good. Are there other  
19 issues that we need to address?

20 MR. GRANT: Judge, I don't think so.

21 Oh, we did confirm there is a library, private,  
22 slash, public, in San Manuel. It's not open all days of  
23 the week. But currently, BHP, one of the things that it  
24 continues to do for the community is to put a few dollars  
25 there, so we'll have a place to put the transcript.

1 CHMN. FOREMAN: That's great.

2 MR. GRANT: I was excited to hear about that.

3 CHMN. FOREMAN: Let me tell you, I have had a  
4 chance to review the draft notice that you provided. And  
5 the only issue that I had was with the use of the word  
6 "will" here on Line 14 or 15, and I thought it should be  
7 "may," because we may want to have the public comment at  
8 the end of the day.

9 MR. GRANT: Oh, correct.

10 CHMN. FOREMAN: We may want to have it at some  
11 other time. And so I think if we don't schedule an  
12 evening public comment session, we just schedule it like  
13 this and say "may," you have language up at the top of the  
14 second page that gives notice of some flexibility with  
15 regard to continuation of meetings and so forth.

16 MR. GRANT: Correct.

17 CHMN. FOREMAN: And so as we get close to the  
18 time of the hearing, and we'll have one more prehearing  
19 conference, at that conference I'm going to want you to  
20 both indicate to me whether you think an evening public  
21 comment session would receive any public participation at  
22 all. If there is a possibility of public participation in  
23 the evening, my inclination would be to try and schedule  
24 something. If it's just going to be an exercise in  
25 futility, then we'll try and hold public comment sessions

1 whenever anybody comes through the door and go from there.

2 MR. GRANT: Judge, I am advised, to the extent  
3 that it's helpful, that most of the people in San Manuel,  
4 and it's only about 1,500 to 1,800, are retired. So I  
5 offer that only from the standpoint of their schedules are  
6 more flexible than might otherwise be the case.

7 CHMN. FOREMAN: Okay. Then is there anything  
8 else that we need to address?

9 MR. GRANT: Nothing.

10 MS. MITCHELL: No, Mr. Chairman.

11 CHMN. FOREMAN: All right. We look forward to  
12 getting a copy of the notice after you have had an  
13 opportunity to talk, and we'll go from there.

14 MR. GRANT: Sounds good.

15 MS. MITCHELL: Thank you so much.

16 (The Second Prefiling Meeting concluded at  
17 10:20 a.m.)

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1 STATE OF ARIZONA       )  
                                  )   ss.  
2 COUNTY OF MARICOPA   )

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4               I, MICHELE E. BALMER, Certified Reporter  
5 No. 50489 for the State of Arizona, do hereby certify that  
6 the foregoing printed pages constitute a full, true and  
7 accurate transcript of the proceedings had in the  
8 foregoing matter, all done to the best of my skill and  
9 ability.

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11               WITNESS my hand this 22nd day of March, 2009.

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